

28 September 2012

Secretariat  
Committee on Payment and Settlement System  
Bank for International Settlements  
Sent by e-mail to [cpss@bis.org](mailto:cpss@bis.org)

Secretariat  
Technical Committee  
International Organization of Securities Commissions  
Sent by e-mail to [fmiresolution@iosco.org](mailto:fmiresolution@iosco.org)

**Response to the Consultative Report “Recovery and resolution of financial market infrastructures” from Japan Securities Clearing Corporation (JSCC)**

**Dear Secretariats,**

Japan Securities Clearing Corporation (hereinafter “JSCC”) appreciates the opportunity to comment on the Consultative Report “Recovery and resolution of financial market infrastructures” published on 31 July 2012 by Committee on the Payment and Settlement System and Technical Committee of the International Organization of Securities Commissions.

Among the issues raised in the Report, JSCC would like to submit several comments as follows.

**1. Comment on the fourth question**

To what extent should the possibility of a tear-up in recovery be articulated in ex ante rules?
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(Comment)

So as to implement FMI’s recovery plan orderly (and to keep the whole market stable) even in the event where tear-up rules are actually invoked, details of tear-up rules (e.g. conditions for invoking tear-up and scope of contracts that is eligible for tear-up) should be well-known among clearing participants in advance. JSCC thinks ex ante rule-making procedure, which enables clearing participants to be involved deeply and seriously, is really important aspect.

Hence, rather than pursuing absolutely correct concept of tear-up in a prescriptive manner, CPSS-IOSCO’s incoming works should focus on reaffirming the recognition that ensuring clearing participants’ acknowledgement in its rule making process is quite important when drawing up tear-up rules.

## 2. Comment on the fifth question

Should there be a limit to the number of contracts that are eligible for tear-up?

(Comment)

Depending on characteristics of cleared products/contracts, scale and type of financial resources that are supposed to be used to cover losses prior to tear-up arrangement, and probability of actual imposition of tear-up burden, suitable form of tear-up varies so there is no generalized solution for defining appropriate scope/limits of contracts that are eligible for tear-up. Therefore, JSCC thinks it is practically difficult to establish a uniform criteria/target of the limit.

## 3. Comment on the ninth question

What, if any, special considerations or methods should be applied when allocating losses whose maximum value cannot be capped (eg when allocating potential losses that might arise from open and uncapped positions at a CCP)?

(Comment)

Ultimately, losses from open and uncapped positions at the time of participant default must be incurred by someone in some form, thus we should focus attention on the aspect of potentially disorderly outcome of FMI's limited financial resources (i.e. limited FMI's right to require participant to replenish financial resources as well as prefunded resources), that is, such financial resources fall short of actual losses and then unforeseeable loss allocation is imposed on participants under general liquidation process.

Hence, rather than regarding finiteness of FMI's financial resources as sacred precondition, JSCC thinks there may be some room to consider establishing more orderly liability framework under which ex ante loss-share rules without setting maximum contribution from participants are prescribed so as to avoid such disorderly loss allocation.

## 4. Comment on the thirteenth question

Are there any circumstances in which the ability to exercise termination rights as a result of the use of resolution powers should outweigh the objective of ensuring continuity?

(Comment)

If an ability to exercise termination rights is permitted, it is extremely difficult for FMIs and Resolution authorities to implement orderly resolution processes. For the objective of ensuring continuity of FMI's function and thus keeping stability of whole financial market, JSCC thinks it unavoidable to constrain participant's early termination rights against a CCP.

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